

Serial No. 10/599,520
Corrected Amendment D dated May 25, 2011
Response to Office Action dated February 25, 2011

Remarks

Claims 1-3, 6-10, and 13-17 are pending and at issue in the present application.

Applicants traverse the rejections of claims at issue as obvious over Gerdt and Potin, standing alone, and as obvious over such references further in view of Goldman. In this regard, although the examiner did not specifically identify claim 14 as being subject to either rejection, the examiner's comments suggest that such claim is rejected over Gerdt and Potin alone.

Claim 1, and claims 2, 3, 15, and 16 dependent thereon, recite a phototherapy method including the steps of arranging a light source at a periphery of a field of vision so as to allow the usual activities of an individual and using a diffractive optical element to deflect light rays by diffraction onto a specific zone of a retina of the individual so as to maintain vision.

Claims 6-10, 13, 14, and 17 specify a device for implementing a phototherapy method on a set of eyes of an individual including a support designed to be immobilised on the head of the individual and at least one light source mounted on the support at the periphery of a field of vision of the individual. The light source emits light rays of at least one specific wavelength and is arranged so that the light rays are directed into the eyes, by deflection means, onto a specific zone of a retina. In addition, said deflection means comprises at least one off-axis diffractive optical element for each eye of the individual.

As an initial matter, applicants disagree with the examiner's contention that it would have been obvious to one of ordinary skill in the art to combine features of Potin with Gerdt to arrive at the subject matter recited by the claims at issue.

It is accepted that Potin describes a visor on which a hologram can be placed to improve the illumination of an exterior scene. This hologram compensates for a gap in illumination provided by the visor itself.

It is clear that the teaching of Potin is to provide a visor with shapes that have been modified to minimize optical distortions perceived by a wearer of a helmet including such a visor. In only one embodiment for providing a modified shape is a holographic diffraction mask fixed to one of the faces of the visor. The holographic mask is described at column 10, line 57 to column 11, line 22 and it is clearly stated that "the hologram records the perturbation caused by the visor on the light rays reaching the eye of the helmet wearer, with an opposite sign because of the real and imaginary complementary

Serial No. 10/599,520
Corrected Amendment D dated May 25, 2011
Response to Office Action dated February 25, 2011

natures of the source points" (column 10, lines 62 to 67). There is no teaching or suggestion that the holographic mask is used to direct light into the eye of the helmet wearer or that the light is focused by this hologram.

The problem that Potin solves is mentioned by the Examiner at page 3 of the Office Action but this problem is not the same problem that is solved by the present invention. In particular, Potin modifies the visor itself to allow for the gap it causes in the illumination. It does not provide any focusing of the light into the eye.

The Examiner states that "it would have been advantageous to modify the invention of Gerdt with the diffractive mask of Potin because doing so would have enabled the light source to be more accurately focused at targets within the eye" (last paragraph of page 3). There is no teaching or suggestion in Potin that the light is focused by any means other than the eye itself.

There would simply be no expectation of success, and therefore no motivation for one of ordinary skill in the art, to combine features of Gerdt and Potin to arrive at the claimed subject matter, as suggested by the examiner, because Gerdt and Potin are directed to solving different problems. Even if it is accepted that, in Gerdt, the light source is arranged around "the periphery of the field of vision so as to allow the usual activities of the individual," there is no motivation to combine such disclosure with the teachings of Potin, which is attempting to correct vision due to offset of the spherical surfaces of a visor.

Indeed, the disclosures of Gerdt and Potin teach away from the examiner's proposed combination. Though the examiner prefers to focus on modifying "the invention of Gerdt with the diffractive mask of Potin because doing so would have enabled the light source to be more accurately focused at targets in the eye" (Office action at 3), "a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention." MPEP § 2141.02 VI (citing *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984)). In this regard, Potin does not disclose taking the light source from around the periphery of the field of vision "to solve the problem introduced by the eyes of the user being offset relative to the center of the spherical internal faces of the visor." (Office action at 3) In fact, if the light from around the periphery of the field of vision were used in Potin, it is believed by the applicants that it would not be possible to solve the problem addressed by Potin of filling in the gap in illumination that is caused by the visor thereof or "to deflect said light by diffraction onto a specific zone of the retina so as to maintain

Serial No. 10/599,520
Corrected Amendment D dated May 25, 2011
Response to Office Action dated February 25, 2011

vision" as recited by claim 1 and the claims dependent thereon. Similar arguments also apply in relation to claim 6 and its dependent claims.

It is therefore submitted that independent claims 1 and 6 and the claims dependent thereon, respectively, patentably distinguish over the combination of the teachings of Gerdt and Potin.

In relation to the teaching of Goldman, it is accepted that such reference teaches spectacle attachments. However, Goldman does not provide the missing motivation to combine Gerdt and Potin as noted above.

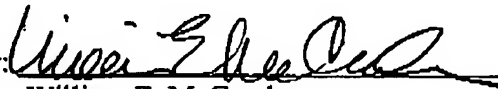
For the foregoing reasons, reconsideration and allowance of the claims at issue are respectfully requested. The examiner is encouraged to call the undersigned attorney or applicants should he feel doing so would expedite prosecution of this application.

Deposit Account Authorization

Should an extension be required in connection with this application, please treat this paper as a request therefor. The Commissioner is hereby authorized to charge any deficiency in any amount enclosed or any additional fees which may be required during the pendency of this application under 37 CFR 1.16 or 1.17, except issue fees, to Deposit Account No. 50-1903.

Respectfully submitted,

McCracken & Frank LLP
311 S. Wacker, Suite 2500
Chicago, Illinois 60606
(312) 263-4700
Customer No: 29471

By: 
William E. McCracken
Reg. No. 30,195

May 25, 2011